

Transportation Solutions Defense and Education Fund

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January 26, 2009
By E-Mail to:
ceqa.ghg@opr.ca.gov

Cynthia Bryant, Director
Governor's Office of Planning and Research
P.O. Box 3022
Sacramento, CA 95812

Re: Draft CEQA Guideline Amendments

Dear Ms. Bryant:

TRANSDEF, the Transportation Solutions Defense and Education Fund, has been involved for the past 15 years in advocacy for regional planning in the fields of transportation, land use and air quality. We participated in the recent Working Group convened by the California Transportation Commission to develop regional transportation plan guidelines responsive to climate change. We are also quite involved in CEQA litigation. With that background, we wanted to offer a hearty "Well Done" for the work done by you and your staff on the Draft CEQA Guideline Amendments.

We especially appreciate the decision to integrate the GHG-related amendments into the body of the CEQA Guidelines. We believe that the impacts of climate change need to be reviewed along with all the other impacts. It is both important and heartening that your team recognized that GHG analysis fits into the overall schema of CEQA. By way of contrast, the RTP Guidelines were unfortunately segregated off into an appendix. That decision continued the habit of seeing the issue of climate change as somehow peripheral to transportation planning, when it is now so central that it will reshape the entire field. By integrating GHG issues into the heart of CEQA practice, OPR recognizes that taking GHG emissions seriously will have far-reaching effects.

We are especially pleased at the proposed amendments of the Transportation/Traffic section of the Checklist. As advocates for infill, we constantly run into LOS and parking demand issues which make it difficult to do the right thing in terms of climate protection. The amendments resolve these issues brilliantly. Thank you!

We also want to congratulate you on Section 15064.4(a)(1). It is very well written, and targetted at precisely the level of abstraction (the attainment of statewide goals) at which emissions can best be analyzed. We agree with comments made at today's hearing that the longer term goals of 2050 reductions should also be fitted in here.

Unfortunately, the clarity of Section 15064.4(a)(1) is not evident in the final phrase of Section 15130(f): “... a cumulatively considerable impact to the environment that cannot be mitigated to a level of less than significant.” We believe it would be far clearer to replace that phrase with “the hinderance of the attainment of the state’s GHG emissions reduction goals.”

We are concerned that the proposed new GHG section of the Checklist refers solely to adverse impacts. One of our major criticisms of current CEQA practice is its inordinate focus on adverse impacts. We have even been told by EIR preparers that identifying project benefits will be seen as advocacy. As advocates ourselves, we think that this attitude is entirely counterproductive. We believe the public and decisionmakers need to be comprehensively informed about a project. That means that an EIR should objectively identify benefits as well as impacts.

We think that when projects are designed to be consistent with Smart Growth and energy conservation principles, EIRs should not be shy about identifying benefits to the environment. By comparing a project to conventional development practices, it will be possible to demonstrate a reduction in per capita emissions compared to the Business as Usual trend. This will be crucial information for decisionmakers, to be considered along with any finding of an absolute increase in GHG emissions over No Project conditions.

Finally, and perhaps most importantly, we want to convey to you our experience in years of air quality planning. We have learned to be very unimpressed by the requirement for “reasonable and feasible mitigations.” The California Clean Air Act requires the implementation of “all feasible measures” to reduce emissions in non-attainment areas. (Section 15130(b)(5) uses very similar language.) We have experienced a decade of foot-dragging by air quality agencies, which declare our innovative mitigation proposals to be ‘unfeasible.’ This then allows these agencies to do the absolute minimum. As a result, the Bay Area is still a non-attainment region for ozone.

The threat of climate change requires actions beyond Business as Usual. There is no way the state can meet its AB 32 goals by continuing to do what is easy and uncontroversial. Practices are going to have to change. SB 375 is the beginning of significant change in development practices. The Low Carbon Fuel Standard and Pavley Bill auto standards mark major changes in the status quo. The problem we are identifying with Section 15130(b)(5) is that “reasonable, feasible options” is an unworkable standard in a time of dramatic change. Most climate-beneficial mitigations can--and often will--be rejected under that standard.

We offer the following proposal, whose background is the Clean Air Act: Federal law identifies a series of measures as Reasonably Available Control Measures, or RACM. The RACM list becomes the floor in developing a feasible mitigation plan. We urge OPR to develop a list of mitigations that are presumed to be Reasonably Available, absent a finding of extraordinary local circumstances. We are convinced that local

agencies will need this kind of explicit guidance before they can process projects while maintaining a mindset of protecting the climate.

We very much appreciate OPR's efforts in this vitally important policy arena. Thank you. Please call on us if we may be of assistance.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President